

ORIGINAL

Raymond A. Greenberg SBN 43394
Perry R. Fredgant SBN 105755
raylaw43@msn.com
RAYMOND A. GREENBERG, ATTORNEY AT LAW
1521 La Venta Road
Westlake Village, CA 91361-3404

Telephone: 805-373-5260
Facsimile: 805-494-8312

Attorneys for Defendant VIRGINIA B. HIRSH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NORTH AMERICAN COMPANY, etc.

Plaintiff,

vs.

MICHAEL L. PHILPOT, an individual,
VIRGINIA B. HIRSH, an individual, ,
JOHN B. KUYKENDALL, an individual,
RENE ALEJANDRO LECAPE, an
individual, C. RICHIE MCNAMEE, an
individual and HECTOR PAEZ VALDEZ,
an individual,

Defendants.

Case No.: 08 CV 0270 BEN NLS

**NOTICE OF MOTION AND MOTION
TO DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN
BE GRANTED(FRCP 12(b)(6))**

**Date: May 5, 2008
Time: 10:30 a.m.
Courtroom: 3**

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 5, 2008, at 10:30 AM, or as soon thereafter as the matter may be heard by the above entitled court located at 880 Front Street, San Diego, CA 92101-8900, defendant Virginia B. Hirsh will move to the Court to dismiss the action pursuant to FRCP 12 (b)(6) because plaintiff's complaint fails to state a claim upon which relief can be granted on the following grounds: that as a matter of public policy of the state of California, pursuant to Proposition 103 enacted on November 8, 1988, and *California Insurance Code* §750

1 (d), the rebate of commission earned on any insurance policy is permissible and therefore there
2 could be no "Illegal Commission Scheme"; that there were no "sham" insurance policies, that the
3 plaintiff received what it knowingly bargained for under California law and suffered no lawfully
4 recoverable damages; that this matter is the subject of the exclusive jurisdiction, or at least a
5 primary jurisdiction, of the California Insurance Commissioner; and, that this matter must be
6 stayed pursuant to the Fifth Amendment to the United States Constitution.

7 Said motion will be made and based upon this Notice of Motion, the Memorandum of
8 Points and Authorities filed herewith, and the pleadings and papers filed herein.

9
10 Dated: April 3, 2008

Respectfully Submitted

11
12 s/ Raymond A. Greenberg
13 Attorney for Virginia B. Hirsch
14 Email: raylaw43@msn.com
15
16
17
18
19
20
21
22
23
24
25
26
27